

REMARKS

Applicant has amended independent claims 1, 11, 15, 17, and 26, while canceling claims 35-36 in addition to previously canceled claims 2-3, 7, 12-14, 16, 18, 23, 25, 27, 29-34, 37, and 40. Additionally, Applicant believes that the amended claims and comments that follow overcome the rejections set forth in the November 19, 2007 Office Action, and put the claims in condition for allowance. No new matter has been added. Claims 1, 4-6, 8-11, 15, 17, 19-22, 24, 26, 28, and 38-39 remain for consideration.

I. THE EXAMINER'S REJECTIONS

35 U.S.C. § 102(a)

The Examiner rejected claims 1, 4, 11, 15, 17, 19, 26, 28, and 35 under 35 U.S.C. §102(a) as being unpatentable over *Friend*, U.S. Patent Publication No. 2001/0032165 (hereinafter "*Friend*").

Specifically, the Examiner states that *Friend*, in reference to independent claims 1, 11, 15, 17, 26, and 35, teaches "a system for utilizing a least one tender, comprising a storage device for storing data which relates to the at least one term of the at least one tender, and a processing device transmitting information corresponding to the stored data, the processing device further receiving a request from the tender recipient to change at least one term of the at least one tender, wherein the term of the at least one tender that is changed relates to a physical characteristic of the complex multi-variable commodity."

(Office Action dated November 19, 2007, pages 2-3)

Moreover, the Examiner states that Applicant's independent claim 35, which recites "[a] set of instructions residing in a storage medium, the set of instructions capable of being executed by a processor to implement a method for utilizing at least one tender created by a tender initiator, wherein the at least one tender is provided for a complex multi-variable commodity

including at least one term", is rejected for a similar rationale as given for claim 11 as the method steps of claim 11 correspond to the steps of claim 35. (Office Action dated November 19, 2007, page 3)

35 U.S.C. § 103

The Examiner rejected claims 5, 6, 8, 9, 20-22, 24, 28, and 36-40 under 35 U.S.C. §103(a) as being unpatentable over *Friend*, U.S. Patent Publication No. 2001/0032165 in view of *May*, U.S. Patent No. 6,421,653 (hereinafter "*May*").

II. THE EXAMINER'S REJECTIONS SHOULD BE WITHDRAWN

As was mentioned above, claims 1, 4, 11, 15, 17, 19, 26, 28, and 35 were rejected by the Examiner under 35 U.S.C. §102(a) as being unpatentable over *Friend*. Independent claims 1, 11, 15, 17, and 26 have been amended to overcome the *Friend* reference, and place the aforementioned independent claims, as well as the dependent claims 4-6, 8-10, 19-22, 24, 28 and 38-39 which depend upon Applicant's amended claims, in condition for allowance.

Particularly, Applicant believes that the present invention, as claimed in newly amended independent claims 1, requires an auction and tender system "comprising a processing device for generating at least one tender, created by said tender initiator, wherein said at least one

tender having an exception request which permits a change to said at least one term of said multi-variable commodity. . . ." (Claim 1, page 2). Additionally, Applicant's amended independent claims 1 and 17 require that a "communication network further configured for receiving a request from said tender recipient to change said at least one term of . . . only if said exception request permits a change when said exception request is generated. . . ." (id.) Similarly, amended claim 17 incorporates similar limitations as amended claim 1.

Applicant believes that these limitations differentiate the present invention over *Friend*. In the present invention, the tender initiator determines whether any exceptions (e.g., changes in terms and conditions) to the tender are acceptable. (Detailed Description, page 14, lines 10-13) Furthermore, as the original tender term and conditions to a tender are set by the tender initiator when the tender is first posted (Detailed Description, page 17, lines 8-9), the exceptions may be requested by a tender recipient only where the tender initiator specifically permitted the exception requests when the tender was originally posted. (Detailed Description, page 17, lines 19-23) Thus, Applicant's invention requires that the tender recipient may request a change to the at least one term only

if the tender initiator posted the tender containing such an allowance for a change.

Moreover, Applicant respectfully believes that *Friend* does not disclose the novel features of the newly amended claims 1 and 17. *Friend* merely allows a user (i.e., tender initiator or recipient) to post offers to buy or sell a commodity, product, service, or transportation (*Friend*, para. [0059]), and system pages located on a platform are individualized for only displaying or receiving buyer and seller specific data, such as desired prices and quantity. (*Friend*, page 4, para. [0043]) *Friend* does not disclose that a user may accommodate negotiations, as an additional term within the system pages, when offers are originally posted, as required by Applicant's amended claims 1 and 17, which states "said at least one term that is changed is requested by said tender recipient only if said exception request permits a change when said at least one tender is generated by said tender initiator."

Additionally, Applicant believes that the present invention, as claimed in amended claims 1 and 17, requires changing "at least one term" (Claims 1 and 17) for at least one tender, where the term changed relates to a "physical characteristic of the complex multi-variable commodity." (Claims 1 and 17) Further, as found in the specification, the present invention provides that a multi-

variable commodity is traded according to the specific needs of a buyer or seller, and the variable characteristics of the commodity are the physical characteristics, which are accounted for when pricing the commodity and subsequently, posting the tender.

(Background Information, page 3, lines 5-12) These physical characteristics are the inherent characteristics of the commodity, and not the external characteristics such as point of delivery or transportation. (Background Information, page 3, lines 12-12) These are shown by the limitations to independent claims 1 and 17 that require "at least one term of said at least one tender that is changed relates to a physical characteristic of said complex multi-variable commodity" and claims 11, 15 and 26 that require "at least one term of the at least one tender that is changed by the exception relates to a physical characteristic of the complex multi-variable commodity."

Furthermore, Applicant believes that *Friend* merely discloses negotiating the price or quantity terms for the commodity (*Friend*, page 13, para. [0100]-[0103]). These negotiated terms represent an external characteristic of the commodity and not a physical characteristic as required by Applicant's amended claims 1 and 17.

Moreover, dependent claims 4-6, 8-10, 19-22, 28, and 38-39 are believed allowable for at least the reasons that the respective base claims are in allowable condition.

Furthermore, the Examiner rejected claims 5, 6, 8, 9, 20-22, 24, 28, and 36-40 under 35 U.S.C. § 103(a) as being unpatentable over *Friend* In view of *May*. However, due to the arguments presented above and to the fact that dependent claims 5, 6, 8, 9, 20-22, 24, 28, and 38-39 contain all the limitations of their respective base claims, dependent claims 5, 6, 8, 9, 20-22, 24, 28, and 38-39 are therefore allowable for the same reasons as their respective base claims.

III CONCLUSION

Applicants submit that the specification, drawings, and all pending claims represent a patentable contribution to the art and are in condition for allowance. No new matter has been added. Early and favorable action is accordingly solicited.

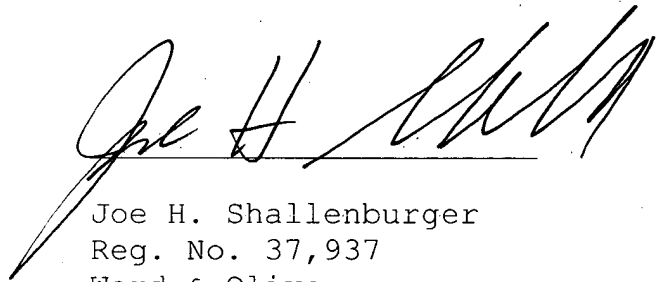
Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same. This Amendment is being timely filed. In the event that any additional fees are required for the entry of this

amendment, the Patent and Trademark Office is specifically
authorized to charge such fees to Deposit Account No. 23-
0420 in the name of Ward & Olivo.

Respectfully submitted,

Date

6/10/08

A handwritten signature in black ink, appearing to read "Joe H. Shallenburger", written over a horizontal line.

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